Submission to Winnipeg City Council on the Proposed Amendments to the Obstructive Solicitation By-Law

Submitted by the Social Planning Council of Winnipeg
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1. EXECUTIVE SUMMARY

The Social Planning Council of Winnipeg, established in 1919, is a non-profit community based membership organization in the voluntary sector whose vision is for a just, caring, inclusive, and responsive society. The Social Planning Council has a strong background and current role in working with the community to address homelessness, panhandling, and squeegee issues. In 1998 the Social Planning Council led an interagency working group to examine and make recommendations on the squeegee issue. The final report was submitted to the Task Force on Squeegee Issues and led to the development of Powerhouse in the Osborne Village area. Currently, we are working with a community partnership on housing and homelessness, particularly with the Project Funds Allocation Committee (PFAC) as part of a shared delivery model with the Winnipeg Housing and Homeless Initiative.

The proposed amendments to the Obstructive Solicitation By-Law is cause for concern on a number of fronts. The Social Planning Council of Winnipeg views the proposed amendments as a harmful and ineffectual attempt to hide the issue of homelessness and poverty from public sight and to criminalize Winnipeg's most marginalized and vulnerable population, rather than implementing solutions that work for all parties. This amendment would abrogate both the rights of people who panhandle and the rights of those who choose to help.

We have to carefully ask ourselves what the real goal is with the new proposed amendments. It appears that the intent is to prevent members of the public from giving money to people who panhandle in the hopes that the problem will disappear. Limiting the ability to panhandle in places where there is a high degree of pedestrian traffic, such as bus stops, the proposed by-law amendments would likely lead to further impoverishment of an already marginalized and vulnerable population. In this document we outline the Social Planning Council's concerns with the proposed amendments, consider some of the public costs of such an effort, and advance recommendations which consider alternative and more effective solutions.

2. CONCERNS WITH THE PROPOSED AMENDMENTS

a. There is an unclear distinction between aggressive and passive forms of panhandling.

The act of panhandling is often identified as one of two forms: aggressive or passive. Panhandling is essentially the public act of solicitation (either verbally or otherwise) for money, food, or other forms of assistance. Aggressive panhandling involves solicitation of a threatening, intimidating, or otherwise aggressive nature. The incidence of aggressive panhandling is actually quite low and that most encounters between a person who panhandles and a passerby are "a mundane, unthreatening affair" (Schafer, 1998). In fact, the majority of studies conducted on the issue have concluded that it is rare for people who panhandle to intentionally do so in an aggressive manner for the reasons that they realize it may result in fewer contributions and lead to increased police attention (Scott, n.d.; Lankenau, 1999). Only a small handful of panhandlers in Winnipeg are actually considered to be aggressive and they are often already known to the local authorities The Social Planning Council has requested information on the number of complaints related to aggressive panhandling received by the Winnipeg Police Service. The administration report says "many", and we would have expected that they would have been counted to come to this conclusion. We would also like to know how many charges have been laid and proven under the existing by-law.

The most pressing justification for a stronger by-law is the perception that aggressive panhandling is a growing problem in Winnipeg that is not being addressed by current legislation. Aggressive panhandling is consistently cited as a public safety concern and a significant factor in the perception of downtown as an unsafe place to live, work, and shop. While one cannot deny that there are incidents involving aggressive panhandlers, little is actually known of its extent or scope. A 2002 Downtown Biz member survey revealed that 84% of their members thought that panhandling was a downtown problem, but this does little to shed light on the actual number of occurrences of aggressive panhandling and how they have been dealt with. Evidence that would support this claim, in the form of documented complaints with the City of Winnipeg and the Winnipeg Police Service, does not appear at this time to be available to the general public.

Despite claims that it is targeted to an "aggressive" form of panhandling, the by-law amendments will actually serve to prohibit all forms of panhandling in certain public spaces, including those who are passively panhandling, and many who are in need of genuine assistance. The mayor wrongly asserts that the amendments do not attempt to prohibit panhandling, but to regulate it by controlling where "obstructive solicitation", or aggressive panhandling, can occur in the city. The problem with this is that the definition of obstruction has been expanded to include solicitation of a "captive audience". The emphasis is being placed on who is being solicited, i.e. people at ATM machines, bus shelters, etc. and not on how the solicitation is occurring. What differentiates "passive" and "aggressive" forms of panhandling is the manner in which people are solicited, but under the proposed amendments, passively sitting on a corner with a cup in front of a bank machine becomes the equivalent of a verbal or physical assault on a passerby.

What is particularly alarming is the discriminatory assumption that people who panhandle pose a risk to public safety, regardless of their individual actions and conduct. This is evidenced by the proposed amendment to include gestures as a form of obstructive solicitation, even from a distance when clearly there could be no threat or risk to public safety.

b. Denial of rights and public protection to people who panhandle.

A common perception is that aggressive panhandling makes the downtown unsafe and threatens the public's right to protection and safe public spaces for residents and visitors alike. While the City clearly has a responsibility to protect its citizens and ensure their safety, this applies equally to people who panhandle. People who panhandle also have a need for "a safe and civil environment in public places where they may freely engage in usual activities of the urban milieu" and are likewise entitled to not be obstructed or threatened while in public places.

By obfuscating the distinction between passive and aggressive forms of panhandling, there is serious concern that the proposed amendments will increase the safety concerns for this vulnerable and marginalized population and expose rather than protect them from harm. For example, there is reason to believe that it will increase public fear, rejection, and aggression because the proposed amendments, in effect, send the message that people who panhandle are to be feared thus decreasing the level of public tolerance for this "troublesome" group who are not worthy of public concern or assistance.

There is a strong likelihood that people who panhandle will themselves be victims of crime, harassment, and verbal abuse from the public. In his study on panhandling, Lankenau (1999) found that people who panhandle are often exposed to insults, demeaning comments, "hostile outbursts", physical abuse, and "non-person treatment". According to the Centre for Problem Oriented Policing, one study found that in their sample, half of the people who panhandled had been robbed within the past year (Scott, n.d.). Banishing people who panhandle from areas of high public activity could make them more vulnerable to these safety concerns.

c. Aggressive forms of panhandling are already prohibited by law.

As Winnipeg's current by-law already prohibits the act of soliciting in an obstructive manner, it is unclear how the proposed amendments will serve to "crack down" on aggressive forms of panhandling. The Criminal Code of Canada prohibits the attempt to obtain money by force, or aggressive or threatening actions (National Anti-Poverty Organization, 1999). It is questionable whether the use of intimidation and aggression when requesting money from a passerby should even be considered "panhandling", per se, or if it is more akin to theft or robbery. This would suggest that the strengthened restrictions in the proposed amendments are intended to extend beyond those acting in an aggressive manner to criminalize all forms of panhandling.

Attempts to criminalize panhandling in Canada and the United States have been met with legal challenges. In 2000, Winnipeg's former anti-panhandling by-law "A By-Law to Control Obstructive Solicitations for Donations" was replaced with its current new by-law after the National Anti-Poverty Organization (NAPO) initiated a legal challenge. NAPO advanced that the by-law violated the right of people who panhandle to freedom of speech that is afforded under the Charter of Rights and Freedoms. NAPO argued that by-laws against panhandling infringe on three separate rights: freedom of expression, the right to equality without discrimination, and the right to security of the person (National Anti-Poverty Organization, 1999). By restricting where people who panhandle are able to express themselves and by assuming that all panhandlers pose a threat, the proposed amendments also abrogate their rights as well as the rights of the people who wish to help them.

If the current by-law is not effective (we cannot know this, however, without information from the police service and Manitoba Justice) it is due to lack of enforcement and not its strength. The Center for Problem-Oriented Policing in their paper on panhandling found that enforcing these by-laws can be difficult because only a very small minority of people who panhandle do so in an aggressive manner so there are not many violations of the by-law by the community of people who panhandle (Scott, n.d.). They further state that another complication in the enforcement of these by-laws is that many of the threatening incidents that do occur often go unreported (Scott, n.d.). If there are no police around to witness a person being threatened or intimidated, the police must rely on complaints from the public who may not report it.

Some have suggested that the current by-law would not need amending if proper enforcement were already in place. While some people who panhandle are transitory, there is also a territorial element to panhandling (Lankenau, 1999), so many who violate the by-law would likely be known to police, local businesses, and area residents or workers. One could also question the utility of fining a population who depends on panhandling as a part or all of their income. A social and economic impact analysis of the Ontario Safe Streets Act (OSSA) was conducted by researchers at Guelph University in 2003. They explored the effects the OSSA had on youth who were engaged in squeegee activity. What they found was that many of the youth continued to engage in the activity despite the laws against it and despite repeated citations and a number of fines they were unable to pay (O'Grady and Greene, 2003).

e. Anti-panhandling legislation is not an appropriate response to the broader social issues, of which panhandling is a symptom.

Schafer (1998) argued that anti-panhandling legislation is an inappropriate legal response to what is only a symptom of a deep social problem – extreme poverty and marginalization. Contrary to popular conception, the root causes of panhandling are not addictions and mental health, but poverty and systemic marginalization. While there is no denying that poverty and panhandling are sometimes compounded by mental health or addictions issues, panhandling needs to be placed in the broader socio-economic context. It must be understood as a part of broader social forces such as the economy, income

security and adequacy, food security, racism, availability of quality affordable (low cost) housing, and social programs and services in Canada. Research in the United States has shown that panhandling increases as the economy declines and as government social programs become more restrictive (Scott, n.d.).

Most people who panhandle are not there because they choose to be, but because they have to be. The 1993 evaluation of the Change for the Better Program found that 88% of the panhandlers they surveyed depended on income assistance and were considered "unskilled". The survey found that changes in the labour force and job market affected the ability of middle aged panhandlers to find employment. In a report for the Caledon Institute, Schafer (1998) found that many of the people who panhandle who are middle aged did not have a high school education and were living with the effects of a past work related injury. As a result, they were without the confidence or motivation to find satisfactory employment (Schafer, 1998). They also faced limitation and often may not be able to return to work permanently or without modified duties. Clearly disability policy and supports as well as opportunities for education and training are much needed interventions that are not meeting the needs of the population.

There are similar findings from a study of the spending patterns of people who panhandle in Toronto. The researchers, Bose and Hwang (2002), found that 70% of those interviewed stated that they would prefer a minimum wage job and commonly cited their desire for a "steady income" or desire for "getting off the streets". The researchers found that many could not handle conventional employment due to factors such as mental health issues, physical disability, or lack of appropriate skills (Bose and Hwang, 2002). The Change for the Better evaluation by the Downtown BIZ found that 98% of respondents reported they were willing to work.

According to Schafer (1998), the problem requires an approach that is based on progressive income redistribution and provision of housing and social services. The proposed amendments to the by-law ignore the systemic roots of poverty. Clearly, placing restrictions and limitations on panhandling without first addressing the underlying causes and ensuring the provision of needed supports, will have extreme consequences for those who are already experiencing the greatest depths of poverty.

3. WHAT ARE THE LIKELY PUBLIC COSTS?

a. The costs of enforcement

While an enforcement plan for the proposed amendments has not yet been developed, one could imagine the costs of enforcement would be substantial. Not only would there be a need for more police patrolling, more people who panhandle would be subject to the new by-law. Costs would include police calls to various locations, arrests, detainment, issuing of fines, enforcing collection, prosecution, and possibly imprisonment. In 2002/2003, 7637 people were processed at Main Street Project for a cost of $267,295 to the City and Province, which does not include the additional costs of 911 calls, fire, and paramedics (Rick Joyal, communication to the Poverty Advisory Committee, May 2004). As police

resources are scarce, further expansion of the scope of the by-law would lead to fewer resources for crimes that are of a more serious nature.

b. Increased poverty and marginalization

Despite claims that panhandling is a lucrative business, the vast majority of people who panhandle do so out of desperation and destitution (Schafer, 1998). Often times there are no alternate sources of income for people who panhandle. According to the 1998 Downtown BIZ survey, a staggering 13% reported that they depended on panhandling as their primary source of income. A recent study in Canada found that panhandling and squeegee activity are necessary activities for the survival of people on the street because of the difficulties with enrolling on income assistance and the low benefits that these programs provide. In the 1993 Change for the Better survey by the Downtown BIZ, outreach workers found that 66% of respondents reported that they earned less than $10.00/day panhandling and only 3% reported earning more than $10.00/day. The 1998 survey found that 68% of respondents, however, panhandled to supplement the allowance received by Employment and Income Assistance – a meager $5760/year.

Research has found that arrests made under panhandling by-laws have actually disrupted or blocked attempts made by people who panhandle to attain stability and leave the street. It is difficult, if not impossible for those who have found employment and housing to not experience disruption and a likely set back. The analysis of the Ontario Safe Streets Act also found that the Act served to further marginalize an already vulnerable population whose well being was impacted particularly as it related to housing conditions, negative experiences with police and the criminal justice system, and economic activity (O'Grady and Greene, 2003).

Another perspective suggests that interactions with the general public help to improve the self-respect or worth of people who panhandle, which is also an important determinant of health. In their study, Bose and Hwang (2002) found that some panhandlers see panhandling as an opportunity to meet people and interact with others in their community. When asked if they enjoyed panhandling, 43% responded yes, primarily because they have the opportunity to meet people. 48% answered no and described panhandling as degrading (Bose and Hwang, 2003). Lankenau's (1998) research found that the acknowledgement of passersby and interactions with the general public legitimated the panhandlers' own self worth and identity as a person. He concluded that the (positive) interactions and relationships that develop between people who panhandle and the general public is important for " a minimum amount of financial and psychological well-being" (pg. 313).

c. Increased criminal activity

Currently, there is no evidence to suggest that legislating against panhandling decreases its occurrence, but there is research that suggests restrictions on panhandling may lead to involvement in criminal offences, prostitution, and drug sales. For example, youth who squeegee are less likely to engage in criminal activity, but its criminalization could lead

to an increase in street crime because there are few other options (Novac, et al, 2002). The analysis of the Ontario Safe Streets Act found that there was an increase in drug dealing among young males after the OSSA was implemented (O'Grady and Greene, 2003). Further, in his research on panhandling, Lankenau (1999) argued that if people were to stop giving, the needs will not simply disappear but rather "many panhandlers would regain these losses by participating more heavily in informal or underground economic activities" including working under the table, prostitution, theft, and drug dealing.

4. RECOMMENDATIONS

Without addressing the root causes of panhandling and the needs of people who panhandle, any legislation will be ineffective, particularly if the goal is solely to eliminate the activity. There is strong evidence that solutions need to include a continuum of shelter, training, alternative employment, and income supports. On the basis of this analysis, and the research that is available, the Social Planning Council of Winnipeg advances the following recommendations in place of the proposed amendments to the Obstructive Solicitation By-law:

1. A community dialogue, such as a task force on poverty, that will engage stakeholders and other levels of government and lead to the development of a community based strategy and action plan with appropriate and fair solutions that focus on prevention and not criminalization;

2. Accessibility and transparency of information on complaints and by-law charges relating to panhandling;

3. Development of a poverty advisory committee at City Hall that would consist of representatives of the community to advise council and make recommendations on important policy and legislative issues related to poverty in the City of Winnipeg;

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